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No. 411.

SUPREME COURT OF THE UNITED STATES.

Br. of Tarsney for P. E. Com'n

October Term, 1900.

Filed Jan. 7, 1901.

CITY OF DETROIT, THOMAS M. LUCKING, Receiver of Taxes of the City of Detroit, and WILLIAM B. THOMPSON, Treasurer of the City of Detroit,

Plaintiffs in Error,

vs.

RALZEMOND A. PARKER,

Defendant in Error.

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MOTION TO ADVANCE AND BRIEF FOR PLAINTIFFS IN ERROR IN SUPPORT OF MOTION.

TIMOTHY E. TARSNEY,
Counsel for Plaintiffs in Error.

DETROIT:
THOS. SMITH PRESS.
1901.

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MOTION.

The plaintiffs in error come by Timothy E. Tarsney, their attorney, and respectfully ask that the above entitled cause may be advanced on the call and order of the docket, and the earliest practicable day assigned for its hearing, for the following reasons:

First. Because the cause, as shown by the record and the accompanying affidavit, is one of very great public interest and importance.

Second. For the special and peculiar circumstances set forth in this motion and the accompanying affidavit and abstract of record.

Third. Because upon the decision of the cause depends the right of every city and village in the State of Michigan

to assess for the grading and paving of streets under the provisions of their several charters and the general laws of the State of Michigan now in force.

Fourth. Because the Legislature of the State of Michigan commenced its biennial session on the 2nd day of January, 1901, and will in all probability adjourn on or about the 1st of July, 1901, and will hold no regular session until the first Wednesday of January, 1903; and it is very desirable that this cause should be heard, if possible, before the close of the present session of the Legislature, so that in case the judgment of the Circuit Court is affirmed the Legislature can take such action for relief of the City of Detroit and other municipalities as may be deemed necessary in view of such decision.

This motion is based upon the abstract of record, and affidavit of William B. Thompson, hereto attached.

TIMOTHY E. TARSNEY,
Attorney for Plaintiffs in Error.

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Defendant in Error.

STATE OF MICHIGAN,
EASTERN DIST. OF MICHIGAN, } ss.
COUNTY OF WAYNE.

WILLIAM B. THOMPSON, being duly sworn, deposes and says:

1. That he is Treasurer of the City of Detroit, and one of the plaintiffs in error in the above entitled cause, and makes this affidavit in behalf of all of the said plaintiffs in error.

2. That on the 28th day of July, A. D. 1900, the Circuit Court of the United States for the Eastern District of Michigan, Southern Division, made a decree in the above entitled cause, setting aside the sale of the property described in the bill of complaint in said cause for the taxes assessed on said premises for paving Woodward and Blaine avenues, in the City of Detroit, and that said decree was made upon the ground that the charter of the City of Detroit providing for the assessment of taxes for paving streets upon the property abutting on the part of the street

paved, according to frontage, was in conflict with the Fourteenth Amendment to the Constitution of the United States, a true copy of which charter, so far as it relates to such assessment, is hereto attached, marked "A."

3. That the City of Detroit has now outstanding unpaid paving assessments which are affected by said decree, to the amount of four hundred and forty thousand dollars; that bonds of the City of Detroit have been issued in accordance with the provisions of the charter, payable from said assessments when collected, and are now outstanding to the amount of five hundred seventy-nine thousand and eighty-three dollars, which bonds have been bought and are now held by the Sinking Fund Commissioners of the City of Detroit, and said bonds now form part of the assets of said sinking fund.

4. That since the decision in this case the payment of assessments for paving has largely decreased in the City of Detroit, and, as deponent is informed and believes, such payments have also largely ceased in the cities and villages throughout the State of Michigan.

5. That deponent has caused investigation to be made, and is informed and verily believes, and alleges the fact to be, that the charters of all the cities and villages in the State of Michigan, as well as the general laws of the State of Michigan, contain a provision for assessing the cost of grading and paving streets upon the lands abutting on the part of the street paved, pro rata, according to the front foot, substantially the same as the provision contained in the charter of the City of Detroit, and that the decision in this case affects all the cities and villages in the State of Michigan.

6. That the Legislature of the State of Michigan commenced its biennial session on the 2nd day of January,

1901, and that such session will probably extend to about the 1st of July; that no other regular session of the Legislature will be held until the first Wednesday in January, 1903; and that it is very desirable that the above entitled cause, if possible, be heard and disposed of prior to the adjournment of the session of the Legislature, so that in case the decision of the Circuit Court is affirmed, the Legislature may take such action as may be necessary to provide a valid law for the assessment of paving taxes for the City of Detroit and the other cities and villages in the State, and take such action as may be necessary to relieve the City of Detroit and other municipalities from the effects of the decision in this case.

A true copy of Sec. 33, Art. IV., of the Constitution of the State of Michigan, providing for the sessions of the Legislature, is hereto attached, marked "B."

WM. B. THOMPSON.

Subscribed and sworn to before me this third day of January, A. D. 1901.

THOS. W. THOMPSON,
Notary Public, Wayne Co., Mich.

"A."

The charter of the City of Detroit, so far as it relates to assessments for paving streets, is as follows:

Chapter VII., Sec. 33: "The Common Council shall have power to make, grade, improve and adorn the public squares, spaces, grounds and parks belonging to or under the control of the corporation, and to control and regulate the same consistently with the purposes and objects thereof. It shall have power to establish, open, widen, extend, straighten, alter, vacate and abolish highways, streets, ave-

nues, lanes, alleys and public grounds or spaces within said city; and to grade, pave, repair and otherwise improve the highways, streets, avenues, lanes, alleys or interior public spaces created by the intersection of streets, crosswalks and sidewalks in said city, with stones, wood, brick or other material; and the Common Council shall have full power and authority to provide for the paying the costs and expenses thereof by assessment in such manner as shall be prescribed by law, which assessment hall be a lien, until paid, on the lot, lots or premises on which the same are bounded, and shall be collected in such manner as shall be authorized by law; * * *"

Chapter XI., Sec. 34: "For the purpose of such assessment, the lots and parcels of real estate situated on said street and fronting the portion thereof ordered to be improved shall constitute one local assessment district, unless the Common Council, with a view to make the assessment more equal and just, shall subdivide the same into two or more assessment districts. Such subdivision, if made, must be done before asking bids for the work, and in no case shall a city block be divided in making such subdivision. * * *"

Sec. 35: "The cost and expense of such improvement, except so much thereof as shall be for the work within the lines of intersection of cross streets and alleys, and for the crosswalks at such intersections, and for repaving streets, avenues and highways, shall be assessed ratably, according to their extent of front on the lots, parts of lots, or parcels of real estate directly fronting on and within the local assessment district; provided, that if the assessment made on any such lot, or other parcel of land, shall, by reason of its triangular or other irregular shape, seem to the Common Council to be inequitable, said council may direct a just portion of such assessment to be paid from the general

road fund. The cost of the work within the lines of the intersection of cross streets, and also the cost of the cross-walks, shall be paid out of the general road fund. The cost of all repaving of streets, avenues and highways of the city shall be paid out of the repaving fund. The word 'front' as used in this act, shall be construed to mean that part of the lot or other parcel of land which directly abuts on that part of the street to be improved."

Sec. 37: "The Board of Assessors shall, when necessary, proceed to make out a list of all the lots or parcels of real estate constituting a local assessment district as aforesaid, with the name of the owner or occupant of each lot or parcel of real estate, so far as said board can ascertain the same, and also the length of front of each lot or parcel of real estate fronting directly on such improvement. Such board shall then assess the cost and expenses of the work, chargeable as aforesaid upon the property in said list, ratably upon the several lots and parcels of real estate, according to the length of front thereof. When the assessment roll is thus completed, said board shall give notice by at least five publications in the city paper, that such roll is completed and will remain in their office for twelve days from the first publication of said notice for the inspection of all concerned. At the expiration of said twelve days said board shall, after any needful revision and correction of such roll, sign the same and report it to the Common Council. Said council may then confirm the same, or may, when it shall deem necessary, refer the same back to said board for further revision or corrections. And when the same shall be corrected to the satisfaction of said council, it shall, by resolution, confirm the same. After such confirmation, such assessment shall constitute a lien until paid upon said lots or parcels of real estate, and shall be collected in such manner as may be authorized by law."

"B."

Article IV., Sec. 33, of the Constitution of Michigan:

"The Legislature shall meet at the seat of government on the first Wednesday in January, in the year one thousand eight hundred sixty-one, and on the first Wednesday of January in every second year thereafter, and at no other time or place, unless as provided in the Constitution of the State, and shall adjourn without day at such time as the Legislature shall fix by concurrent resolution."

BRIEF.

Chapter XI., Secs. 34, 35 and 37, of the charter of the City of Detroit, provide that the entire cost and expense of grading and paving streets, excepting intersections of cross streets and alleys, shall be assessed upon the property abutting on the part of the street paved, pro rata, according to the foot front.

The property of defendant in error was assessed under this provision of the charter for paving Woodward and Blaine avenues. The assessments were not paid and the property was sold and bid off to the City of Detroit for ninety-nine years. The time for redemption from these sales has expired, and the sale has become absolute.

The bill was filed in this cause to set aside the tax assessments and vacate these sales and quiet the title to the property, on the ground that the provisions of the charter of the City of Detroit providing for the assessment of the entire cost of the paving according to the foot front on the property abutting on the street was in conflict with the

Fourteenth Amendment to the Constitution of the United States.

After a full hearing of the case a decree was rendered on the 28th day of July, 1900, by the Circuit Court of the United States for the Eastern District of Michigan, setting aside the assessments and vacating the sales for the reason that the provisions of the charter were in conflict with the Fourteenth Amendment to the Constitution of the United States, and therefore void.

There are assessments for paving now due to the City of Detroit, amounting to four hundred and forty thousand dollars, which are rendered invalid by this decision. Bonds have been issued by the city for the amount of these assessments, which have been bought and are now held by the Sinking Fund Commissioners of the City of Detroit as a part of the assets of that fund, and the effect of this decision is to invalidate all these taxes and bonds.

Nearly all the special charters held by cities in the State of Michigan, and the laws incorporating cities of the fourth class and villages, contain provisions for the assessment and collection of paving taxes according to the foot front, substantially the same as the provisions of the Detroit charter in question in this case.

Under Article IV., Section 32, of the Constitution of the State of Michigan, the Legislature holds biennial sessions on the first Wednesday in January in the years 1901 and 1903. The session of the Legislature for 1901 commenced on the 2nd day of January, and will continue until about the 1st of July, 1901, and there will be no other session of the Legislature after such adjournment until the first Wednesday in January, 1903, unless a special session is called.

If this court should affirm the decision of the Circuit Court of the United States for the Eastern District of Michigan, holding these provisions of the charter of the

City of Detroit unconstitutional, it would be necessary for the City of Detroit and the other cities and villages of the State to have their charters amended by the Legislature in order to make and collect assessments for the grading and paving of streets, and the case should be heard and decided, if possible, prior to the adjournment of the Legislature.

It clearly appears from the motion and accompanying papers, that unless this cause is advanced and decided during the present session of the Legislature, so that in case the decision of the court below should be affirmed, action might be taken by the Legislature to relieve the cities and villages from the consequences of the decision that the various municipalities would be greatly hindered and prevented from making improvements of streets for nearly two years.

Notice of this motion has been given to counsel for the opposite party, and we are advised by counsel for the defendant in error that he will join in this application.

We submit that in view of the public importance and interest of the questions involved in this case, the motion should be granted.

TIMOTHY E. TARSNEY,
Counsel for Plaintiffs in Error.